

## SAMPLE AGREEMENT FOR CONSULTANT SERVICES FOR DEVELOPING A COMPREHENSIVE PLAN

The Office of Land Information Services has included in its list of resources for developing a comprehensive plan under §. 66.1001, Wis. Stats. this sample agreement prepared by Mr. Tom Harnisch, legal counsel for the Wisconsin Towns Association. It is offered for use as an educational tool only.

OLIS staff strongly advises that each community entering into a contract for consulting services take the time to examine, revise, and appropriately cater an agreement to fit the specific planning needs of your community.

If your community has received a comprehensive planning grant, your agreement with a planning consultant should thoroughly and specifically reflect the activities required within the terms of the planning grant agreement your community signed with the Department of Administration.

Finally, this sample agreement focuses its language on a single jurisdictional, town comprehensive plan, however, the language is appropriate for any type of municipality can be altered as such. Also, the sample can be altered to reflect joint or multi-jurisdictional comprehensive plan efforts.

**FOR EDUCATIONAL PURPOSES ONLY**

**BY THOMAS W. HARNISCH  
LEGAL COUNSEL FOR WISCONSIN TOWNS ASSOCIATION**

**DRAFT II**

**AGREEMENT FOR COMPREHENSIVE PLANNING SERVICES BETWEEN  
\_\_\_\_\_ A WISCONSIN MUNICIPALITY AND \_\_\_\_\_ CONSULTANT.**

THIS AGREEMENT, made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 200\_, by and between \_\_\_\_\_, County of \_\_\_\_\_, a Wisconsin Municipality, hereinafter referred to as the "Municipality", and by \_\_\_\_\_, located at \_\_\_\_\_ authorized herein by this Agreement to provide the consultant planning and related technical and professional Services for the Municipality in the State of Wisconsin, hereinafter referred to as "Consultant":

**WITNESSETH:**

WHEREAS, the above noted Municipality requires comprehensive planning and technical consulting Services and the appropriate documents and materials to assist in its development of a municipal "visioning" process and to assist in its long-range comprehensive planning for the Municipality; and

WHEREAS, the above noted Municipality desires, with its statutory authority, to have its governing body timely adopt a Final Comprehensive Plan document by Ordinance that will comply and address the public participation plan and that will comply with and address the nine (9) elements noted in §66.1001, Wis. Stats. or its successor provisions.

WHEREAS, the Final Comprehensive Plan, when complete and adopted by the Municipality, shall be in sufficient content and detail in order to serve, at least in part, for the basis and authority of the governing body of the Municipality to approve or deny under §66.1001 Wis Stats, or its successor provisions, any proposed action or program in the Municipality that relates to land use or affects land use in the Municipality.

WHEREAS, any proposed action or program in the Municipality that relates to or affects land use, after January 1, 2010, is to be approved by the governing body of the Municipality only if it is consistent with and not contradictory to the Final Comprehensive Plan and the nine (9) elements contained therein when complete and adopted by the Municipality as an Ordinance.

WHEREAS, the above noted Consultant has available and offers to provide by this Agreement to the Municipality the properly trained and sufficient planning personnel, proper equipment and the proper facilities to accomplish the appropriate and necessary professional planning and technical consulting Services and to provide the proper materials and documents for

the Municipality to aid the Municipality in its designing and creating of a complete Final Comprehensive Plan to be adopted by the Municipality.

WHEREAS, the Final Comprehensive Plan, upon adoption by the Municipality, must be complete and sufficient in detail, with appropriate maps and content, to demonstrate the “vision” process of the governing body of the Municipality and to comply with §66.1001, Wis. Stats. or its successor provision.

WHEREAS, the noted Final Comprehensive Plan must contain and address, in sufficient detail and content, the nine (9) elements and the public participation plan in order to allow for any recommendation by the Plan Commission to the governing body of the Municipality for adoption by the governing body as an Ordinance.

WHEREAS, the above noted Consultant responded to a Proposal by the Municipality, attached and incorporated herein as Exhibit “A”, whereas the Municipality received a written Final Response from Consultant attached and incorporated herein as “Exhibit B” and whereas both parties have adopted a mutually agreeable work schedule attached and incorporated herein as “Exhibit C”.

NOW THEREFORE, Municipality and Consultant agree as follows:

#### GENERAL DEFINITIONS

1. Agreement – Means this Agreement with the provisions for the consulting, technical and planning Services and documents and materials to be provided by the Consultant to this named Municipality.
2. Consultant – Means the party retained as an independent contractor and engaged by the Municipality in this Agreement to provide consultant planning and technical Services, and to provide documents and materials for the benefit of the Municipality.
3. Consultant Representative – Means the qualified employee or officer of the Consultant who has the duties and responsibilities to act for the Consultant and to supervise the consultant, planning and technical Services and documents and materials prepared and to be provided by the Consultant to the Municipality under this Agreement.
4. Governing Body – Means the governing body of the Municipality, which for this Agreement shall be \_\_\_\_\_.
5. Master Plan – Means a Plan created and adopted by the Municipality in accordance with Chapter 62, Wis. Stats. or its successor Chapter.
6. Comprehensive Plan – Means the Comprehensive Plan to be designed, created and proposed and recommended by the Consultant to the Plan Commission for adoption by the Municipality as an Ordinance in §66.1001, Wis. Stats. or its successor provision. When submitted by Consultant to the Plan Commission, the Comprehensive Plan shall be the proposed Final Comprehensive Plan.
7. Comprehensive Plan Project – Means the works of the Municipality and Consultant to design, create and to recommend for adoption to the Municipality a proposed

complete Final Comprehensive Plan for the Municipality in accordance with §66.1001 Wis. Stats or its successor provision, the potential adoption of the proposed Final Comprehensive Plan by the Municipality and the work thereafter to the term of this Agreement.

8. Plan Commission – Means a duly appointed Plan Commission for the Municipality appointed by the governing body of the Municipality.
9. Municipal Representative – Means the person appointed by the governing body of the Municipality to act as agent for the Municipality under this Agreement.
10. Services – Means the planning and technical consulting Services, facilities and labor, equipment, documents, materials and incidentals to be provided by Consultant to Municipality for the Comprehensive Plan Project in accordance with this Agreement and in accordance with “Exhibit B” and “Exhibit C”, incorporated herein by reference.

## I. SCOPE OF PROPOSED SERVICES

**SPECIFIC CONSULTANT SERVICES** – Consultant agrees to perform those professional planning and technical consulting Services and to provide those appropriate and necessary planning and technical documents and materials for the Municipality, which are more particularly described in this Agreement, and are described in the document incorporated by reference in this Agreement as the attached “Exhibit B” Final Proposal from Consultant to Municipality dated, \_\_\_\_\_, 200\_, and the mutually agreeable work schedule as the attached “Exhibit C” dated \_\_\_\_\_, 200\_. The provision of these Services, documents and materials under the Comprehensive Plan Project, are to commence on \_\_\_\_\_ 200\_ and will be fully completed by Consultant within three (3) months after the Final Comprehensive Plan is adopted as an Ordinance by the Municipality or \_\_\_\_\_, whichever date is later.

Consultant agrees with the Municipality that time is of the essence for the Municipality and therefore, Consultant shall design, create and submit a proposed complete Final Comprehensive Plan to the Plan Commission by at least \_\_\_\_\_ 200\_. With any State Grant application made under §16.965, Wis. Stats. or its successor provision, by the Municipality to the State of Wisconsin, the Consultant agrees that Consultant shall timely design, create and submit the proposed complete Final Comprehensive Plan to the Plan Commission, in order for this proposed complete Final Comprehensive Plan to be properly reviewed by the Plan Commission, at minimum, within at least twenty-four (24) months after the State Department of Administration and the Municipality executes an Agreement for State grant funds to be provided to the Municipality or the date noted above, whichever date is earlier. Where the provisions of the Agreement and the provisions of “Exhibit B” or “Exhibit C” are inconsistent, the provisions of this Agreement shall comply.

## B. GENERAL SERVICES

1. The Services, under this Agreement, shall consist of Consultant providing, to the satisfaction of the Municipality, all those professional planning and technical Consulting Services and documents and materials appropriate, necessary or incidental to accomplish the elements of this Agreement, including the provisions noted in “Exhibit B” and “Exhibit C”, consistent with applicable professional planning and technical standards and criteria to be applied in the design and creation of the proposed Final Comprehensive Plan.. Specifically, these Services shall include providing the timely professional planning and technical consulting and assistance to aid the Municipality in the completion of the Comprehensive Plan Project and to aid the Municipality in the proper and complete design, creation and timely submittal of a proposed complete Final Comprehensive Plan to the Plan Commission that will comply and be in accordance with a proper public participation plan and that will fully comply with and address fully the nine (9) elements noted in §66.1001, Wis. Stats. or its successor provision.
2. The Consultant shall, for the Comprehensive Plan Project, furnish to Municipality all necessary documents, materials, facilities, equipment, supplies and incidentals, other than those designated in writing as to be furnished by the Municipality that are necessary and appropriate for Consultant to timely provide the professional planning and technical consulting Services, and to timely design, create and submit a proposed complete Final Comprehensive Plan to the Plan Commission.
3. The principal contact by the Consultant with the Municipality shall be through the Municipality Representative.
4. Since some of the Services to be provided by Consultant under this Agreement may be financed in whole or part with Federal or State funds, the Services, equipment, facilities, documents, materials and incidentals to be furnished by Consultant shall comply with all applicable Federal and State laws and regulations. The Consultant, on all documents and materials produced for publication for the Municipality and the general public under the Comprehensive Plan Project, if funded all or in part by a State Planning Grant, shall carry and include a notation indicating the participation of and partial funding by the State Department of Administration. If the Municipality receives a State Planning Grant, the Consultant shall provide the State Department of Administration with access to and the right to examine, access, copy, transcribe, excerpt and copy any pertinent material and documents in the possession of Consultant under this Agreement and under any provisions of the Agreement between the Municipality and the State Department of Administration.
5. At the request of the Municipality, the Consultant, during the progress of providing of the Services, documents and materials, shall furnish appropriate information, maps or data, as may be required by the Municipality, to enable it to carry out or to proceed with any related phases of any zoning, land use control ordinances and comprehensive planning actions, not covered by this Agreement, or which may be necessary to enable the Municipality to then furnish information to the Consultant upon which the Consultant can then proceed with providing further Services, documents and materials to the Municipality under this Agreement.

6. Attendance by the Consultant shall be required at any appropriate hearing, required under §66.1001, Wis. Stats., to aid the Municipality to explain the proposed complete Final Comprehensive Plan and Ordinance.
7. The Consultant shall, at the execution of this Agreement, designate to the Municipality a Consultant Representative, with the duties and responsibilities designated in of this Agreement.
8. The Consultant shall become familiar with the history of planning, land use control ordinances, zoning and other land use practices of the Municipality, if any, and the current Comprehensive Plan, Master Plan and other plans, if any, adopted by the Municipality or which are legally impacting on the Municipality and its landowners and residents.
9. The Consultant shall employ, retain and assign a sufficient number of technically qualified and experienced personnel and subcontractors to the Comprehensive Plan Project in order to timely provide the Services, documents and materials to be provided under this Agreement and shall timely provide the documents and materials required to be provided under this Agreement in order for the Municipality to timely design, create, and have submitted to the Plan Commission and have later available for adoption, a proposed complete Final Comprehensive Plan.
10. The Consultant shall, in providing Services, documents and materials, notify the Municipality Representative immediately in writing of any unanticipated or negative Comprehensive Plan Project conditions and concerns.
11. The Consultant shall withdraw any personnel or halt any Services no longer required, at the request of the Municipality, or within a reasonable time after the lack of need becomes apparent to the Consultant.
12. The Consultant shall perform and provide, for the Municipality, physical field tests or surveys or other tests or survey operations in accordance with Federal and State laws and regulations using accepted health, safety, and survey, environmental and professional planning practices.
13. The Consultant shall provide timely sufficient personnel, transportation, supplies, equipment, documents, materials and incidentals, as are needed, to allow Consultant to provide all public information Services required of Consultant under the Agreement, including such personnel, transportation, equipment, supplies, materials, documents and incidentals appropriate and necessary for the public information and public participation written procedures under §66.1001, Wis. Stats. which shall be designed, created and submitted by Consultant in order for the Municipality to foster a proper and complete public participation program under §66.1001, Wis. Stats., for the Municipality.
14. The Consultant shall prepare and timely submit, to the Clerk of the Municipality, such periodic, intermediate performance reporting and final reports and records, as may be required by the Municipality Representative and as are applicable for this Comprehensive Planning Project, which may include:
  - a. Quarterly progress or performance reports.
  - b. Quarterly Statement of working days in compliance with this Agreement.
  - c. Notice of any change in the proposed complete Final Comprehensive Plan, including the design, creation and adoption status and timeline.

- d. Other records and reports as required for the Comprehensive Plan Project by the Municipality Representative, including any performance reports required by the State Department of Administration for the Municipality for performance reporting on the Comprehensive Plan Project due to any State Planning Grant Agreement between the Municipality and the State Department of Administration. The Municipality reserves the right to suspend any payments for fees and costs to Consultant if the required records and reports are not provided to the Municipality on a complete and timely basis.
- 15. The Consultant shall collect, properly label or identify, and deliver to the Clerk of the Municipality all original diaries, maps, surveys, logs, notebooks, accounts, records, reports and other documents and data prepared by the Consultant in the performance of this Agreement, upon completion or termination of the Agreement.
- 16. The Consultant shall provide, to the Clerk of the Municipality, upon completion or termination of the Agreement, all guides, maps, surveys, data, written instructions, contracts and plans, unused forms and record keeping books, and other public documents and materials furnished by the Municipality. The Consultant may be responsible for replacing lost documents or materials at a fair and reasonable price.
- 17. The Consultant shall prepare and timely submit to the Municipality, a copy of the complete Final Comprehensive Plan, as adopted , by Ordinance, on software Microsoft Word 98 or other software acceptable to the Municipality.
- 18. The Consultant shall prepare and timely submit on a described Web Page with an announced Internet address, a copy of the complete Final Comprehensive Plan as adopted by Ordinance by the Municipality governing body.
- 19. The Consultant shall prepare and timely submit a Certificate of Completion of the Agreement to the Municipality upon completion of the Agreement.
- 20. The Consultant shall, after full consultation with the Plan Commission, timely design, create and submit to the Plan Commission in statutory compliance and in sufficient detail, accuracy and clarity, with sufficient maps, data and content, the proposed complete Final Comprehensive Plan. The goal, intent and purpose is to obtain and create a proposed complete Final Comprehensive Plan that will receive a positive recommendation by the Plan Commission for later adoption of the proposed complete Final Comprehensive Plan, by the Municipal governing body, as an Ordinance with a minimum content that will provide:
  - a. A demonstration in the proposed complete Final Comprehensive Plan document to the governing body of the Municipality of the short term planning (less than ten (10) years) and long term planning (more than ten (10) years) with a demonstration of the “vision”, planning perspective and planning goals, intent and views of the Municipality, as established by the Plan Commission.
  - b. A demonstration in the proposed complete Final Comprehensive Plan document to the governing body of the Municipality, that may serve, at least in part, as the basis for and a reason or reasons why the governing body of the Municipality, or both, would or could approve or deny any proposed

action or program, on or after January 1, 2010, in the Municipality, pursuant to §66.1001, Wis. Stats. or its successor provision, that relates to or affects land use in the Municipality.

21. If included in the Final response by Consultant, herein noted as “Exhibit B” , as an item to be provided by Consultant, then the Consultant shall, in cooperation with the Municipality and the Plan Commission and at the written request of the Municipal Representative and the governing unit of the Municipality, timely complete and submit for review, approval and possible execution by the Municipality any possible Grant application for funding of the Comprehensive Plan Project, including any application under §16.965, Wis. Stats. a successor provision. If any Grant application is submitted under §16.965, Wis. Stats. and its successor provision to the State of Wisconsin, Consultant, after consultation with the Plan Commission, the Municipal representative and the Municipal governing body shall design and create the application for submittal to the Municipality that will contain the elements and goals noted in §16.965(4), Wis. Stats. or its successor provision.
22. Compliance by the Consultant with all of the foregoing provisions shall be within the purview of this Agreement and shall not constitute a basis for additional or extra compensation.

#### C. CONTROL AND AUTHORITY

1. The Consultant Representative shall be designated by the Consultant to act as agent for the Consultant, to serve as field supervisor of all planning and technical consulting Services performed by Consultant under this Agreement, to act as liaison between the Consultant, the Plan Commission, the Municipality Representative and the Municipal governing body. The Consultant Representative shall be responsible and be in direct control of all planning and technical consulting Services to be performed by Consultant under this Agreement.
2. Any orders issued and requests made by the Municipality Representative, the Plan Commission or the governing body of the Municipality to the Consultant will be transmitted through the Consultant Representative to any personnel, subcontractors or other agents of the Consultant.
3. In the event of a controversy, the Consultant Representative shall first confer with the Municipality Representative and then, where appropriate, transmit the agreed or disputed course of action to the Plan Commission and the governing body of the Municipality and any officers, employees, subcontractors or agents of the Consultant. The Municipality reserves the unilateral right to assign or augment its own personnel, subcontractors or agents, or terminate the Agreement, as Stated in Section XIII.

#### D. SPECIFIC MUNICIPALITY SERVICES

Municipality agrees to provide, at no cost to the Consultant, any existing public information and open public records accessible to Municipality that would be beneficial to assist the Consultant in providing the Comprehensive Planning Project Services, materials and documents to aid in the timely design, creation and submittal of a complete proposed Final Comprehensive Plan to the Plan Commission. This does not require that the Municipality



create any new record in a new format, nor to provide information or records considered confidential or a closed record by the governing body of the Municipality, the Plan Commission or other appropriate public government body committees.

#### E. GENERAL MUNICIPAL SERVICES

1. The Municipality shall make available to the Consultant copies of any existing Comprehensive Plans, Master Plans and other plans, drawings, plan revisions and other public information and data necessary and available to the Municipality to enable the Consultant to timely provide the Services, documents and materials under this Agreement.
2. The Municipality shall provide for the use of the Consultant a supply of any work schedule progress reporting forms necessary for the Consultant to timely document for the Municipality the Services, documents and materials provided to date and to be provided to complete the Services, documents and materials under this Agreement to the same compliance standards required of any Municipality personnel or other contracted service providers and to comply with the adopted mutually agreeable work schedule as noted in "Exhibit C".
3. The Municipality, by the governing body, shall designate a Municipality Representative with the duties and responsibilities set forth in this Agreement.
4. The Municipality shall provide, through the Municipality Representative, such assistance and guidance to the Consultant, the Consultant Representative and the Plan Commission, as may be reasonably necessary to allow the Consultant to timely design, create and timely submit a proper and complete Final Comprehensive Plan to the Plan Commission, the proposed complete Final Comprehensive Plan and to perform and complete this Agreement in conformance with the provisions of this Agreement and within lawful and ethical practices of this Municipality and its officers and employees.
5. The Municipality shall reserve the right to retain and assign to aid in the Comprehensive Plan Project such Municipality employees, personnel or other agents as may be needed to perform Services and work duties or to augment the subcontractors and personnel of the Consultant. The cost of such Municipality personnel services will be reflected in a decrease in any Service order or payments due to Consultant or as a direct financial charge from the Municipality to the Consultant if such assignment is required by the failure of the Consultant to timely provide sufficient properly-qualified and personnel and subcontractors and the necessary and appropriate documents and materials to complete the design and create the Final Comprehensive Plan and Ordinance as determined by the governing body of the Municipality.

## II. AUTHORIZATION AND COMPLETION

### A. SPECIFIC AUTHORIZATION

Upon execution of this Agreement, the Municipality grants the Consultant specific authorization to immediately proceed with providing the planning and technical consulting Services, and to provide necessary documents and material for the Comprehensive Plan Project as described in the Final Proposal of Consultant

attached as “Exhibit B” and incorporated herein by reference. Consultant will timely provide these Services, documents and materials under the adopted mutually agreeable work schedule of Consultant, incorporated by reference as “Exhibit C”, until the Comprehensive Plan Project is complete and the proposed complete Final Comprehensive Plan is submitted to the Plan Commission to be adopted by ordinance by the Municipality governing body and then for three (3) months thereafter or until \_\_\_\_\_, whichever date is later.

**B. GENERAL AUTHORIZATION**

1. It is anticipated the Services, documents and materials to be provided under the Agreement by Consultant for the Comprehensive Plan Project will start on and be completed by Consultant on the dates indicated in IA.
2. To the extent possible and subject to III. A.(7) below, the Consultant shall complete all appropriate and necessary Services, documents and materials to be rendered under this Agreement not later than three (3) months after the adoption by Ordinance of the Final Comprehensive Plan by the Municipality governing body in compliance with the adopted work schedule mutually approved by the Municipality and Consultant as noted in “Exhibit C.”
3. Services by Consultant under this Agreement shall commence with attendance at an initial Comprehensive Plan Conference by Consultant and the Municipality. Attendees may include the Consultant Representative, the Plan Commission members, the Municipal governing body members, the Municipality Representative and such other Municipality and Consultant personnel or agents as may be designated by each party to this Agreement. The Municipality will notify the Consultant of the location, date and time and will make necessary room and public meeting arrangements for the initial conference. Topics for discussion may, at minimum, include the scope of the proposed Comprehensive Plan Project, the approved mutually acceptable work schedule noted as “Exhibit C” and the anticipated design, creation and submitted schedule for the proposed complete Final Comprehensive Plan, identification of the Consultant Representative and Municipal Representative, required staffing by the Consultant lines of communication and authority, potential conflicts of interest, public record, public meeting, public information and public participation plan needs, equipment and facility needs, grant status and grant applications, if any, the standard professional practices of the Consultant and the standard municipal practices of the Municipality, and other related subjects.
4. The Consultant shall complete the Services, documents and materials for the proposed complete Final Comprehensive Plan under this Agreement within the time for completion specified. Time shall not be extended because of any unwarranted or avoidable delay attributable to the Consultant, but may be extended by the governing body of the Municipality in the event of a delay attributable to the Municipality or its authorized representatives, or because of unavoidable delay caused by an Act of God, Act of War, Act of Government or other conditions beyond the control of the Consultant, including “unavoidable delays” as defined in the specifications.

5. Consultant, by the Consultant Representative, shall notify the Municipality in writing when the Consultant has determined the Services, documents and materials under this Agreement are complete and all appropriate and necessary documents and materials have been provided to the Clerk of the Municipality for the design, creation and submittal of a proposed complete Final Comprehensive Plan to the Plan Commission.
6. Upon completion of the Comprehensive Plan Project and this Agreement, the Consultant shall file a Certification of Completion with the Clerk of the Municipality. The Certificate shall certify that the obligations and duties of the Consultant under the Agreement are complete, that the appropriate and necessary Services have been performed, that a complete proposed Final Comprehensive Plan has been submitted by the Consultant to the Plan Commission, that all necessary and appropriate documents and materials have been provided to the Municipality by the Consultant, and that this Agreement has been completed in substantial conformance with the Final Proposal by Consultant incorporated herein as “Exhibit B” and the accepted mutually agreeable work schedule in “Exhibit C” and with the provisions of this Agreement.
7. Unless the Agreement has been terminated prior to the completion of the Services, as provided in Section XII, the Agreement shall not be considered fulfilled upon completion and acceptance of the Services, documents and materials by the Municipality or upon final payment by the Municipality therefore, but shall be considered to remain in full force and effect for the purposes of requiring the Consultant to make revisions or corrections in the Services, documents and materials, including revisions to the Final Comprehensive Plan, as are necessary to correct the errors in the Services, materials or documents provided by the consultant, or for the purposes of having the Consultant make revisions in the Services, materials or documents, including revisions to the Final Comprehensive Plan as “Extra Services” at the written request of the Municipality.
8. Should the Municipality deem it necessary for the Consultant to render “Extra Services” for review and amendment of any Agreement provisions, conditions, claims or for any litigation matters during and after completion of the Agreement, the Consultant agrees to cooperate and render the requested “Extra Services”. These Services shall be paid for by the Municipality as “Extra Services” in the amount and manner mutually agreed upon by the Municipality and the Consultant as an Agreement Amendment.
9. A Closeout Conference shall be held prior to the completion date of this Agreement, with Consultant and Municipality, to evaluate the performance of the Consultant. Attendees may include the Consultant Representative, the Municipality Representative, the Plan Commission members, the Municipality governing body members and such other personnel or agents as may be designated by each party of the Agreement. The Municipality will notify the Consultant Representative of the location, date and time and will make necessary room and meeting arrangements for the conference. The evaluation of Consultant shall consider the quality, completeness and adequacy of the Consultant’s Services, documents and materials, extent of any conflict of interests, any corrections or revisions in the documents and

materials, the ability of Consultant to timely meet the schedules, cooperation by Consultant with the Municipal Representative, the Plan Commission, the governing body of the Municipality and the general public, the substantiation of costs by Consultant, the claims for "Extra Services" by Consultant and the documentation of claims and other related financial, legal and Service provision subjects by Consultant. The evaluation shall become a permanent part of the Consultant's record kept by the Municipality.

10. This Agreement will be considered fully completed when the Consultant is released from the Agreement by the mailing of the written notice from the Municipality to the Consultant Representative.

#### C. CONSULTANT COORDINATION AND PUBLIC RELATIONS

1. Consultant shall be responsible for contact and coordination with all affected local, State and Federal agencies, including the County of \_\_\_\_\_, and the following other municipalities: (List) \_\_\_\_\_. The Consultant shall also be responsible to contact and coordinate with other appropriate Consultants and the general public involving the Comprehensive Plan Project, the Final Comprehensive Plan and the provisions of the Agreement.
2. Efforts shall be made by the Consultant, with consultation with the Plan Commission, to inform and advise property owners likely to be affected by the Comprehensive Plan Project and the proposed complete Final Comprehensive Plan, to advise local government authorities likely to be affected by the Comprehensive Plan Project and the proposed complete Final Comprehensive Plan activities and to aid the Municipality in meeting the public information and public participation requirements in §66.1001 Wis. Stats. of its successor provisions.
3. The Consultant shall cooperate fully with the Municipality, the Plan Commission and with local, State and Federal agencies, including the County of \_\_\_\_\_, the general public, and other Consultants with the Comprehensive Plan Project when so directed by the Municipality Representative or the governing body of the Municipality.
4. The Consultant shall, if the Municipality is located within a Metropolitan Planning Organization (MPO) area, agree to cooperate with the MPO, involve the MPO in the Comprehensive Plan Project and the Comprehensive Plan Project and shall request the MPO to review the transportation Elements of the proposed Final Comprehensive Plan for consistency with any Federal, State and Regional Plans.

#### D. MEETINGS AND CONFERENCES

1. Consultant, by the Consultant Representative, or other designees, shall attend, as required in the mutually agreeable work schedule noted in "Exhibit C", all Conferences of the Municipality, when requested by the Municipality Representative, beyond the Initial and Closing Conferences, for the discussion and review of the Services provided or to be provided under this Agreement. These Conferences shall be scheduled by the Consultant Representative and the

Municipality Representative. These Conferences may also include Plan Commission meetings and meetings of the Municipality governing body. The minimum number of required attendance Conferences for Consultant in days and hours shall be established and agree to in the mutually agreed work schedule noted in "Exhibit C."

2. Conferences may be held, but not required, upon written request of the Consultant Representative, and shall include, at minimum, attendance by the Consultant Representative, the Municipality Representative and members of the Plan Commission.
3. These Conferences are, in addition to those meetings, which are necessary for close coordination during day-to-day progress of the Comprehensive Plan Project between the individual personnel of the Municipality and the personnel of the Consultant.

### III. COMPENSATION

#### A. GENERAL COMPENSATION

The Municipality agrees to pay, and the Consultant agrees to accept, compensation in accordance with the Final Response by Consultant to proposal of Municipality dated \_\_\_\_\_, 2001 noted as "Exhibit B" and incorporated herein by reference.

#### B. BASIS OF PAYMENT

1. The Municipality agrees to pay and Consultant agrees to accept Compensation in accordance with this Agreement and the schedule in "Exhibit B" incorporated herein by reference.
2. Reimbursement for costs and expenses for Consultant will be limited to those which are allowable under a written approval of the Municipality governing body or as noted specifically in "Exhibit B", incorporated herein by reference.
3. A percent of the fixed compensation fee for Consultant, as noted, will be withheld by Municipality until the terms of this Agreement have been fulfilled and the final release written notice is mailed to the Consultant Representative. Specifically, the fixed fee amount to be withheld by the Municipality shall be \_\_\_\_\_.
4. The payment by the Municipality for any completed and approved Services, documents and materials rendered for the Comprehensive Plan Project under this Agreement by Consultant is intended as full compensation for work performed or Services, documents and materials rendered and for all labor, materials, supplies, equipment and incidentals appropriate and necessary and provided to complete these Services and work pursuant to this Agreement, "Exhibit B" and to the approved mutual work schedule noted in "Exhibit C" by Consultant and by any subcontractor or agent of Consultant.
5. The Consultant Representative shall submit invoices, on the form provided by the Consultant, not more often than once per month during the progress of the Services, for partial payment on the account, for the authorized Services, documents and materials completed to date. The final invoice for payment shall be submitted by the Consultant Representative to the Clerk of the Municipality within two (2)

months after adoption of the Final Comprehensive Plan by the governing body of the Municipality or by \_\_\_\_\_, whichever date is later.

6. The Agreement is subject to §16.528, Wis. Stats. or its successor provision, with interest on Late Payments. Interest will begin on the 61<sup>st</sup> day after the Consultant is released from the Agreement by written notice mailed to the Consultant Representative at the rate of \_\_\_\_\_ percent on the unpaid balance.
7. No payment by the Municipality, including payment of any delayed fixed fee, shall be construed as any Municipality acceptance of unsatisfactory or defective services or improper materials or documents rendered by Consultant. Final payment of any balance due the Consultant, including the fixed fee, will be made by municipality only after its verification to the Municipality of completion of the Services, documents and materials to be provided by Consultant for the Comprehensive Plan Project under the Agreement, the acceptance by the Municipality of any and all survey notes, maps, data, records, reports, final estimates, guides, contracts and plans, and other documents required to be returned or to be furnished by the Consultant to the Municipality under this Agreement and then within thirty (30) days after the mailing to the Consultant Representative of the written notice of release of the Consultant by the Municipality.
8. The Municipality has the equitable right to set off against any sum due and payable to Consultant under this Agreement, any financial amount the Municipality determines the Consultant owes the Municipality, whether arising under this Agreement or under any other Agreement or otherwise.
9. All documents and evidence pertaining to costs incurred by the Municipality under this Agreement will be available for inspection by the Municipality or its agents during normal business hours in the Consultant's office for a period of three (3) years following the mailing of the written notice of release by the Municipality to the Consultant Representative.

C. SERVICE ORDERS, EXTRA SERVICES, OR DECREASED SERVICES

1. Written change orders regarding Services, documents and materials may be given by the Municipality through its Municipal Representative as approved by the governing body of the Municipality. Properly approved written change orders by the Municipality that change or revise in any way, the scope or type or amount of Services in this Agreement or increase or decrease the quantity of labor, documents or materials or any other costs and expenses for the Services, documents and materials to be provided shall not annul or void this Agreement.
2. The Consultant, with the change order, must proceed with the Services, as directed by Municipality, by furnishing the necessary labor, equipment, materials, documents and planning and technical consulting services to complete the Comprehensive Plan Project within the time limits specified in the work schedule in "Exhibit C" and this Agreement or as adjusted by any written Amendment of this Agreement by the parties.
3. If in the Consultant's opinion the written change orders involve Services, materials or documents not included in the terms or scope of this Agreement, or that would require the discarding or redoing of Services, documents or materials, which were

based upon earlier direction or approvals, the Consultant Representative must notify the Clerk of the Municipality and the Municipal Representative in writing of its opinion if it desires extra compensation for "Extra Services."

4. Such notification shall include the justification for the claim for extra compensation and the amount of additional fee requested. Compensation for "Extra Services" will be at a rate of \_\_\_\_\_ dollars per hour for professional services and \_\_\_\_\_ dollars for technical services.
5. The Municipality governing body will review the Consultant's submittal and, if acceptable, approve a written change order as an Amendment to this Agreement. Services requested under a written change order shall not proceed until so authorized by the Municipality by written Agreement Amendment approved by the governing body of the Municipality.
6. If the Municipality orders or requests a decrease in Consultant Services, documents or materials as provided in Section IB of this Agreement, the cost of the Municipality Services, documents and materials will be shown in the change order and the change order will also direct an appropriate pro-rata reduction, in the Fixed Fee withheld and other Agreement financial amounts noted in "Exhibit B", "Exhibit C" and in this Agreement.

#### IV. RESPONSIBILITY OF CONSULTANT

##### A. PROFESSIONAL SERVICES, MATERIALS AND DOCUMENTS

1. The Consultant is employed and retained under this Agreement to render high quality professional and timely planning and technical consulting Services for the Comprehensive Plan Project and to provide high quality professional materials and documents only, and any payments made to the Consultant are compensation by Municipality solely for such Services, materials and documents provided and for any planning and technical consulting recommendations and opinions made in carrying out the Services and in providing the documents and materials.
2. The Consultant shall follow the standard practices of the planning and technical consulting profession to make proper, complete and accurate findings and factual presentations along with providing proper professional advice and recommendations to the Municipality. The Consultant is fully responsible to properly supervise and aid any and all officers, employees, agents, subcontractors or other representatives of Consultant in their providing high quality and timely Services, materials and documents to the Municipality under the Agreement.

##### B. INDEMNIFICATION

The Consultant agrees to indemnify, defend, and hold the Municipality, its officers, employees and agents, including the Plan Commission and its members, harmless from and against any loss or liability incurred out of the sole negligent errors or sole negligent omissions of the Consultant, its officers, its agents, employees, subcontractors or representatives, in the performance of Consultant's duties and responsibilities under the Comprehensive Plan Project and this Agreement.

## V. INSURANCE

- A. The Consultant shall maintain, during the term of this Agreement, and beyond where noted herein, the following minimum comprehensive and public liability insurance and property damage insurance to cover claims for injuries and damages, including accidental death, as well as from claims for property or personal damages which may arise from the performance of Services and the providing of the documents and materials by Consultant to Municipality under the Agreement. This insurance to be maintained by Consultant at least two (2) years after adoption by the governing unit of the Final Comprehensive Plan by ordinance or until \_\_\_\_\_, whichever date is later shall be as follows:
1. Comprehensive commercial general liability insurance, including personal injury liability, blanket contractual liability and broad form property damage liability. The combined single limit coverage for bodily injury and property damage shall be not less than one (1) million (\$1,000,000) per occurrence.
  2. Commercial automobile bodily injury and property damage liability insurance covering owned, non-owned, rented, and hired cars. The combined single limit for bodily injury and property damage per occurrence shall be not less than one (1) million dollars (\$1,000,000.00) per occurrence.
  3. Statutory workers compensation and employers' liability insurance as required by the State having jurisdiction.
  4. Professional liability errors and omissions insurance covering injury and damages resulting from the errors and omissions of the Consultant, its employees, officers, agents and representatives. The combined single limit for injury or damages shall be not less than one (1) million dollars (\$1,000,000.00) per occurrence and two (2) million dollars (\$2,000,000.00) annual aggregate.
- B. An insurance Certificate, (or Certificates) showing the Consultant is covered by the above required types and amounts of insurance shall be furnished to the Municipality prior to the providing of any Services, documents or materials by the Consultant under this Agreement.
- C. A 60-day notice of cancellation or change in coverage will be required of Consultant. All coverage shall be placed with insurance companies licensed to do business in the State of Wisconsin with an A.M. Best rating of A – or better. The Municipality reserves the right to require other coverage and limits as described in the special provisions of this Agreement.
- D. The above insurance requirements shall apply with equal force whether the Services under this Agreement is performed by the Consultant, a subcontractor of the



Consultant, or by any entity employed or retained directly or indirectly by either party.

- E. Any exceptions to the above insurance coverage and requirements by Consultant must have written approval from the Municipality governing body.

## VI. MISCELLANEOUS PROVISIONS

### A. PLANNING STANDARDS

1. All Services performed and documents and materials provided or to be provided for the Comprehensive Plan Project by the Consultant or the employee, officers, agents or subcontractors of the Consultant under this Agreement are to be in accordance with high quality professional planning and technical consulting practices, planning policies and the goals required under this Agreement and in "Exhibit B" and "Exhibit C." Special provisions, data, policies, manuals, maps, guides, documents, materials and other written material, information and instructions from the Municipality, provided to and then to be accepted by the Consultant to aid in the Comprehensive Planning Project, shall be accepted only by the Consultant if they are consistent with generally accepted professional technical and planning and consulting practices and the documents and materials provided to the Consultant shall be accurate, complete and high quality, and appropriate and necessary in the design and creation of the proposed complete Final Comprehensive Plan. Any documents and materials to be accepted for inclusion in the proposed complete Final Comprehensive Plan shall be accurate and truthful to the best knowledge of the Consultant and Municipality. Necessary planning maps and data to be accepted for inclusion in this Final Comprehensive Plan shall meet the planning and legal needs of the Municipality under §66.1001, Wis. Stats. or its successor provision.
2. No variation will be permitted except by written change order approved by the Municipality.

### B. OWNERSHIP OF DOCUMENTS

1. Upon completion or termination of this Agreement, the originals of all plans, maps, data, guides, written instructions, copies of the contract, unused forms and record-keeping books, documents, materials and other written data and information furnished to the Consultant by the Municipality for the performance of this Agreement, and all survey notes, diaries, reports, records, estimates, as-built or record plans, and other information and data collected or prepared by the Consultant in the performance of this Agreement shall be properly arranged and delivered to the Clerk of the Municipality, and shall become the property of the Municipality.
2. Documents and materials collected, produced or prepared by the Consultant, as public records for the Municipality in this Comprehensive Plan Project and this Agreement, may be used, without restriction, by the Municipality

for any public purpose. Any such use by the Municipality or the general public shall be without any obligation to the Consultant for compensation to or under any legal claim of any type from Consultant.

3. All documents and materials collected, produced or prepared under this Agreement by Consultant, shall become the property of the Municipality and may be copyrighted in its name and shall be subject to the Wisconsin Open Records Law. The Municipality reserves a royalty free non-exclusive and irrevocable permit to reproduce, publish and otherwise use and authorize others to use the documents and materials for government purposes subject to the Wisconsin Open Records Law in §19.21, Wis. Stats. seq.

C. CONTINGENT FEES

The Consultant warrants that it has not employed or retained any company or person, other than a bonafide employee working solely for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty the Municipality shall have the right to annul this Agreement without liability, or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

D. ACCESS TO RECORDS/AUDIT OF RECORDS

1. The Consultant, subcontractors and other agents of the Consultant, if any, shall agree to maintain for inspection by the Municipality all books, documents, materials, papers, accounting records and other evidence pertaining to all costs incurred under this Agreement and to make such documents and materials available to the Municipality at their respective offices at all reasonable times during the life of the Agreement and for five (5) years from the date of the final release notice provided by the Municipality under this Agreement and to furnish copies thereof, if requested. Consultant shall comply with any access and inspection requirements for the Municipality required by the State Department of Administration for any documents or materials produced with partial funding by the State Department of Administration where these documents and materials are in possession of the Consultant.
2. If more than a nominal number of copies are requested, the additional copies shall be furnished at the expense of the Municipality.
3. Consultant agrees to cooperate fully with any Federal or State auditors, if Federal or State law or regulations requires an audit of any funds received or expended by Municipality, related to the Comprehensive Plan Project or as a result of this Agreement, where the Municipality, in receipt of State or Federal Grant funds will be subject to such audit.

E. LEGAL RELATIONS

1. The Consultant shall become familiar with, and shall at all times observe and comply with, all applicable Federal, State, County and Municipal laws, ordinances and regulations in effect at the time the Services, documents and materials are to be provided to the Municipality under this Agreement.
2. In carrying out the provisions of this Agreement or in exercising any power or Authority granted to the Municipality, there shall be no personal liability upon the authorized representatives of the Municipality, it being understood by Consultant that in such matters they act as agents and representatives of the Municipality.
3. The Consultant shall be responsible for any and all damages to property or persons arising out of a negligent act, error and/or omission by Consultant and the officers, employees, agents, subcontractors and representatives of the Consultant in the providing by Consultant of the Services, documents and materials in the Comprehensive Plan Project under this Agreement.

F. ERRORS AND OMISSIONS

1. The Consultant shall be responsible for the accuracy of the Services performed by and documents and materials provided by the Consultant, by any subcontractor or by any agent of Consultant under the Agreement, and shall promptly make necessary revisions, amendments or corrections to its Services, documents and materials, including any proposed or adopted Final Comprehensive Plan resulting from the negligent acts, errors or omissions of Consultant and the officers, employees, subcontractors, agents or representatives of the Consultant without additional compensation.
2. The Consultant shall give immediate attention to these revisions, amendments or corrections to prevent or minimize delay in the proposed complete Final Comprehensive Plan and the Comprehensive Plan Project for the Municipality.
3. The Consultant shall be responsible to the Municipality for any losses to or costs incurred by Municipality to rewrite, repair or remedy the Final Comprehensive Plan, upon and after adoption of the Final Comprehensive Plan by the Municipal governing body or to rewrite, repair or remedy the proposed Final Comprehensive Plan as a result of negligent acts, errors, or omissions of the Consultant or the officers, employees, agents, subcontractors and representatives of the Consultant.
4. Consultant shall provide to the Municipality materials and documents that are accurate and truthful to the best knowledge of the Consultant and shall immediately correct any known inaccurate and untruthful documents and materials, including data and maps.

G. MUNICIPAL PROCEDURES FOR HANDLING ERRORS

1. The Municipality may recover additional costs incurred by the Municipality as the result of errors determined to be the responsibility of Consultant as described in Section VII. (F). Each Consultant error and the facts about the

error will be reviewed by the Municipality to establish responsibility for additional costs incurred as a result of a particular Consultant error.

2. When the Municipality pursues reimbursement, the Consultant will be notified of the decision and options for repayment. The Municipality's options listed in priority order are:
  - a. Repayment in full.
  - b. Deductions from other payments due and payable to the Consultant by equitable right of set off.
  - c. Legal action by the Municipality to collect the costs, if the Consultant has no other agreements with the Municipality or no payments due and payable, and refuses repayment in full.
  - d. Any combination of the above.

#### H. CONFLICT OF INTEREST

1. The Consultant warrants it has no public or private interest, and shall not acquire directly or indirectly any such interest, which would conflict in any manner with the providing of the Services, documents and materials for the Comprehensive Plan Project and for the providing of the Services, the materials and documents appropriate and necessary for the Municipality for the proposed and the adopted Final Comprehensive Plan under this Agreement.
2. The Consultant, without written consent of the Municipality governing body, shall not employ or retain in anyway, any person currently employed by the Municipality or the State of Wisconsin, for any providing of such Services, documents or materials for the Comprehensive Plan Project and the proposed or adopted Final Comprehensive Plan that are to be included under the provisions of the Agreement.
3. Consultant shall not, without written consent of the Municipality governing body, execute this Agreement if any State public official or local public official, as defined in §19.42, Wis. Stats. or its successor provision, is a party to this Agreement or if an organization in which such official holds at least a ten (10) percent interest is a party to this Agreement.
4. Consultant shall timely inform the Clerk of the Municipality of any other Municipalities and Counties that Consultant has any consultant, independent contract or employment relationships located within \_\_\_\_\_ miles of the Municipality and shall inform the Municipality of the current status of the relationship, including any potential or real conflicts of interest with the Municipality under this Agreement.

#### I. TIME DEVOTED BY CONSULTANT

It is anticipated the Consultant, with its employees and subcontractors will spend during the Comprehensive Plan Project a minimum of \_\_\_\_\_ man-hours in fulfilling its obligations to design, create and submit to the Plan Commission a proposed complete Final Comprehensive Plan under this Agreement. The particular amount of time may vary from day to day or week to week. However, the

Consultant shall devote a minimum of \_\_\_\_\_ hours per month in its duties to provide such Services, documents and materials during the term of this Agreement, in accordance with the mutually agreed work schedule noted in “Exhibit C” and this Agreement.

J. PLACE WHERE SERVICES WILL BE RENDERED

The Consultant will normally perform the Services for the Comprehensive Plan Project and will design, create the documents and materials appropriate for the proposed Final Comprehensive Plan in accordance with this Agreement primarily at \_\_\_\_\_. In addition, the Consultant will perform other Services on the telephone and at such other places as may be designated by the Municipality to perform these Services in accordance with this Agreement. Municipality will not be required to provide facilities, equipment or office space, at any location, for Consultant during the term of this Agreement except as specifically so noted in this Agreement or as noted in “Exhibit B”, incorporated herein by reference.

K. INDEPENDENT CONTRACTOR

Both the Municipality and the Consultant agree that the Consultant will act as independent contractor and not an employee in the performance of the duties of Consultant under this Agreement. The Consultant or the employees or agents shall not be an employee under this Agreement for the Municipality. Accordingly, the Consultant shall be fully responsible for payment for all persons of all taxes including, Federal, State and local taxes arising out of the Consultant’s activities in accordance with this Agreement, including by way of illustration but not limitation, Federal and State Income Tax, Social Security Tax, Unemployment Insurance Taxes, and any other taxes or business license fees as may be required.

L. CONFIDENTIAL INFORMATION

The Consultant agrees that any information received by the Consultant during any furtherance of the Consultant’s obligations in accordance with the Comprehensive Plan Project and with this Agreement, which concerns the confidential or closed meeting affairs of the Municipality, will be treated by the Consultant, its agents and subcontractors in full confidence and will not be revealed to any other person, firm, organization or government units. Any closed records or confidential documents or materials received by Consultant in accordance with the Comprehensive Plan project, the proposed Final Comprehensive Plan and this Agreement, shall be treated by Consultant, its agents and subcontractors in full confidence and will not be revealed to any other person, firms, organization or government unit. The Municipality, by its governing body, may waive this confidential and closed restriction at the written request of the Consultant. In addition, any such closed meeting record, confidential meeting and confidential information received may be released by Consultant under a proper Court order received by the Municipality governing body.

M. BIDDING

1. Both the Consultant and Municipality are advised and agree that this Agreement did not require any bidding by Municipality for the Services, documents, supplies and materials to be provided by Consultant under §60.47 and §66.090, Wis. Stats. or their successor provisions and that any materials, supplies and documents and any incidental items to be provided by Consultant to Municipality for this Comprehensive Plan Project will not exceed five thousand (\$5000) dollars and therefore require no bidding under §60.47, Wis. Stats. or its successor provision as a “public contract.”
2. Both Consultant and Municipality are advised and agree that this Agreement does not require that Municipality and Consultant comply with the State of Wisconsin prevailing wage rate provisions under §103.50, Wis. Stats. or its successor provisions, for any laborers or mechanics in the employ of Consultant, because the Services, to be provided by Consultant to municipality under the Agreement, are not based on bids as provided in §84.06(2), Wis. Stats. or its successor provisions.
3. Both Consultant and Municipality are advised and agree that this Agreement is not under the Federal Davis-Bacon Act in that no features or provisions of this Agreement directly or indirectly require advertisements for repair, construction or reconstruction of any public work project and that no feature or provisions of this Agreement is part of any construction Agreement.

VII. SUBCONTRACTS

The Consultant shall be entitled, to the extent determined appropriate by the Consultant, to subcontract any portion of the providing of Services, documents or materials under the Comprehensive Plan Project. The Consultant shall be responsible to the Municipality for the actions of persons performing and providing these Services, documents or materials. Any subcontract by Consultant for Services, documents or materials under this Agreement shall be approved in writing by Municipality.

VIII. ASSIGNMENT

This Agreement is binding on the heirs, successors, and assigns of the parties hereto. This Agreement is not to be assigned by either the Municipality or Consultant without the prior written consent of the other.

IX. INTEGRATION

This Agreement, with the attached “Exhibit A”, “Exhibit B” and “Exhibit C”, incorporated by reference, represents the entire understanding of the Municipality and Consultant as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement, including the elements contained in “Exhibit A”, “Exhibit B” and “Exhibit C” may not be modified or

altered except in writing signed by both parties. This Agreement supersedes any prior Agreement, whether oral or written, by and between the Municipality and Consultant.

#### **X. JURISDICTION/COMPLIANCE WITH LAWS, REGULATIONS AND ORDINANCES**

1. This Agreement shall be administered and interpreted under the laws and regulations of the State of Wisconsin. Jurisdiction of litigation arising from this Agreement shall be in the State of Wisconsin, County of \_\_\_\_\_. If any part of this Agreement is found to be in conflict with applicable laws, and regulations such part shall be inoperative, null and void insofar as it is in conflict with said laws and regulations, but the remainder of this Agreement shall be in full force and effect. The Municipality and Consultant shall comply with all applicable Federal, State and local laws, ordinances, rules, orders, and regulations in designing, creating and submitting a proposed Final Comprehensive Plan pursuant to this Agreement and in order to comply with this Agreement.
2. The Consultant shall comply with §16.675, Wis. Stats. or its successor provision as follows:
  - a. In connection with the Services, documents and materials to be provided under this Agreement, Consultant agrees not to discriminate against any employee or applicant for employment or any subcontractor or potential subcontractor because of age, race, religion, color, handicap, sex, physical condition, developmental disability, as defined in §51.01(5), Wis. Stats. or its successor provision, sexual orientation or national origin.
  - b. This provision shall include, but not be limited to the following: employment, retention, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or other terms of compensation and selection for training, including apprenticeship.
  - c. Except with respect to sexual orientation, the Consultant further agrees to take affirmative action to ensure equal employment opportunities.
  - d. The Consultant agrees to post in conspicuous places available for employees, applicants for employment, subcontractors and potential subcontractors, notices to be provided by Consultant stating the provisions of this clause in this Agreement.

#### **XI. SUSPENSION OF WORK**

The Municipality may suspend, by written notice to the Consultant Representative, the providing by Consultant of all or a portion of the Services, documents and materials under this Agreement in the event “unforeseen circumstances,” beyond the control of the Municipality will make normal progress in the performance of the Service or the providing of the documents and materials impossible. The Consultant may request that the providing of Services, documents and materials be suspended, by notifying the Clerk of the Municipality and the Municipal Representative by written notice of the circumstances, which are interfering or will interfere with the normal progress of providing the Services, documents and materials. The time for completion of the Comprehensive Plan Project and

the providing of proper Services and necessary materials and documents shall be extended by the number of days the Services and work is suspended. In the event that the period of suspension exceeds ninety (90) days, the terms of this Agreement are then subject to renegotiation and both parties are granted the option to unilaterally terminate the Agreement on the suspended portion of the Comprehensive Plan Project. All the applicable terms of this Agreement remain in force and are a condition to any Services, documents or materials approved to be sublet or assigned.

## XII. TERMINATION OF WORK

- A. The Municipality may terminate, without cause or reason, all or a portion of the Services, documents and material to be provided as covered by this Agreement for its convenience. Either the Municipality or the Consultant may terminate the Service in the event the other party fails to perform in accordance with the provisions of this Agreement. Termination of this Agreement is accomplished by 15 days prior written notice from the party initiating termination to the other. Notice of termination shall be delivered by certified mail with receipt for delivery returned to the sender.
- B. In the event of termination, the Consultant shall perform such additional Services and shall provide the documents and materials as are appropriate and necessary for the orderly filing of the appropriate and necessary materials and documents with the Municipality and the closing of the Comprehensive Plan Project. The additional time for filing and closing for Consultant shall not exceed ten (10) percent of the total time expended by Consultant on the completed portion of the Comprehensive Plan Project prior to the effective date of termination.
- C. The Consultant shall be compensated for the completed portion of the Service on the basis of service actually performed and materials and documents actually provided to Municipality, prior to the effective date of termination, plus the Service, materials and documents required for filing and closing. Charges for the latter work are subject to the 10 percent limitation described in this Article.
- D. In the event the Agreement is terminated by the Municipality, without fault on the part of the Consultant, the Consultant shall be paid for the Services rendered and documents and materials provided on the basis of the Consultant's actual costs, based on Municipality's audit, plus a portion of the Fixed Fee, as determined by mutual agreement between the Municipality and the Consultant as an Agreement amendment.
- E. In the event the Services of the Consultant are terminated by the Municipality, with fault on the part of the Consultant, the Consultant shall be paid the reasonable value of the Services rendered and documents and materials delivered to the Municipality up to the time of termination. The value of Services rendered to the Municipality and documents and materials delivered to the Municipality will be determined by the Municipality.



### XIII. DISPUTE RESOLUTION

In an effort to resolve any conflicts that arise during the term of this Agreement, the Municipality and the Consultant agree that all disputes between them arising out of or relating to this Agreement shall be submitted first to non-binding mediation, or if mutually agreed to in writing, to binding arbitration, with each party to pay one-half of the cost of the arbitration or mediation, unless the parties mutually, in writing, agree otherwise.

The Municipality shall make no claim for professional malpractice or negligence, either directly or in a third party claim, against the Consultant unless the Municipality has first provided the Consultant with a written certification executed by an independent Planner currently practicing in the same planning discipline in Wisconsin. This certification shall:

- a. Specify each and every act or omission that the certifier contends is a violation of reasonable the standard of care expected of a planner performing similar planning and technical consulting Services under similar conditions and similar circumstances to design, create and submit, under §66.1001 Wis. Stats., a proposed complete Final Comprehensive Plan in Wisconsin; and
- b. State in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to the Consultant not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any mediation, arbitration or judicial proceeding involving professional malpractice or negligence.

In the event of any litigation by and between the Municipality and the Consultant, arising from or related to the Services, documents and materials provided under this Agreement, the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorney's fees and other related expenses.

All legal actions by either party against the other arising out of or in any way connected with the Services to be performed hereunder shall be barred and under no circumstances shall any such claim be initiated by either party after two (2) years have passed from the final release date as provided by the Municipality or \_\_\_\_\_ whichever date is later in this Agreement, unless the Services of the Consultant shall be terminated earlier, in which case the date of termination of this Agreement shall be used as that date.

#### XIV. NOTICE

All notices shall be in writing and shall be provided by first class mail or personal service, unless otherwise noted, and addressed to the following persons at the following addresses:

MUNICIPALITY

CONSULTANT

OFFICE OF \_\_\_\_\_ TITLE \_\_\_\_\_

NAME \_\_\_\_\_ NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_ ADDRESS \_\_\_\_\_

#### XV. HEADINGS

The index and titles to paragraphs herein are for informational purposes only and not to be used in construing the Agreement language.

#### XVI. WAIVER

Any waiver by a party of a breach of any term or condition of this Agreement shall not be considered a waiver of any subsequent breach of the same term or any other term or condition of this Agreement.

#### XVII. PRESUMPTION OF DRAFTSMANSHIP

In the event it is necessary to construe the language of this Agreement, it is agreed the construction shall take place without a presumption of draftsmanship against any party to this Agreement.

#### XVIII. EXECUTION

Upon execution of this Agreement, the parties certify that they have read and understood all its terms and that each party has actual authority to enter the Agreement and abide by its terms. The Municipality, with its governing body, shall execute this agreement by its Chair or person designated by the governing body. The governing body shall approve this Agreement, prior to execution, by written resolution adopted by the governing body at a duly noticed public meeting of the governing body of the Municipality.

#### XIX. WARRANTIES AND REPRESENTATIONS

The Municipality and Consultant warrant that they both have the full authority to convey their rights and meet their responsibilities under this Agreement.

## XX. COOPERATION

The Municipality and Consultant shall cooperate in good faith during the pendency of this Agreement in order to timely complete the Comprehensive Plan Project and to timely design, create and submit a proposed complete Final Comprehensive Plan to the governing body of the Municipality for adoption by Ordinance. The Plan Commission and Consultant shall cooperate to the fullest extent possible to timely aid in the design, creation and submittal in a lawful and ethical manner, a proposed complete Final Comprehensive Plan that will meet the nine (9) elements established in §66.1001, Wis. Stats. Consultant shall not be responsible if the Plan Commission, for whatever political reason, by no fault of Consultant, can not timely, during the term of this Agreement, recommend a proposed complete Final Comprehensive Plan to the Municipality or the Municipality, for whatever political reason, by the governing body of the Municipality, can not timely adopt a proposed complete Final Comprehensive Plan, during the term of this Agreement, as an Ordinance. However, Consultant shall design, create and submit to the Plan Commission a public participation plan pursuant to §66.1001, Wis. Stats. or its successor provision, in cooperation with and in consultation with the governing body of the Municipality and the Plan Commission, that will foster public participation at all stages of the Comprehensive Plan Project, including open public discussions, communication programs, information services and public meetings with the goal by the Municipality to create public awareness and public understanding of the Comprehensive Plan Project.

## XXI. SEVERABILITY

If any provision of this Agreement is deemed invalid or unenforced, the balance of this Agreement shall remain in effect.

## XXII. ADVICE OF COUNSEL

The Municipality and the Consultant have read the Agreement and have had ample opportunity to consult with legal counsel and they represent, they understand the contents and meaning of this Agreement.

## XXII. TERM OF THIS AGREEMENT

The term of this Agreement shall be from the execution date of the Municipality, noted as the \_\_\_\_\_ day of \_\_\_\_\_, 200\_, until \_\_\_\_\_, 200\_, unless noted otherwise in the Agreement regarding a specific provision that may extend beyond this Stated term.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written under the terms of this Agreement in Section XIV. The Municipality shall execute last under this Agreement.

CONSULTANT

By: \_\_\_\_\_  
Officer

By: \_\_\_\_\_  
Officer

Date: \_\_\_\_\_

MUNICIPALITY

By: \_\_\_\_\_  
CHAIR

By: \_\_\_\_\_

ATTESTED CLERK

Date: \_\_\_\_\_